



**U.S. Citizenship  
and Immigration  
Services**

**Non-Precedent Decision of the  
Administrative Appeals Office**

MATTER OF S-A-, INC.

DATE: DEC. 5, 2016

APPEAL OF TEXAS SERVICE CENTER DECISION

PETITION: FORM I-140, IMMIGRANT PETITION FOR ALIEN WORKER

The Petitioner, an operator of automotive dealerships, seeks to permanently employ the Beneficiary as an ETL developer.<sup>1</sup> It requests classification of the Beneficiary as a member of the professions holding an advanced degree under the second preference immigrant category. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2). This category allows a U.S. business to sponsor a professional with an advanced degree or its equivalent for lawful permanent resident status.

The Director, Texas Service Center, denied the petition. The Director concluded that the record did not establish the Beneficiary's possession of the educational credentials required for the offered position and the requested classification.

The matter is now before us on appeal. The Petitioner claims that the Beneficiary possesses the equivalent of the required degree based on a combination of education and therefore meets the requirements of the offered job and the requested classification.

Upon *de novo* review, we will dismiss the appeal.

## I. LAW AND ANALYSIS

### A. USCIS' Role in the Employment-Based Immigration Process

Employment-based immigration is generally a three-step process. First, an employer must obtain a certified ETA Form 9089, Application for Permanent Employment Certification (labor certification) from the U.S. Department of Labor (DOL). *See* section 212(a)(5)(A)(i) of the Act, 8 U.S.C. § 1182(a)(5)(A)(i). Next, the U.S. employer files Form I-140, Immigrant Petition for Alien Worker, with U.S. Citizenship and Immigration Services (USCIS). *See* section 204 of the Act, 8 U.S.C. § 1154. If the Form I-140 is approved, the foreign national would apply for an immigrant visa abroad or, if eligible, adjustment of status in the United States. *See* section 245 of the Act, 8 U.S.C. § 1255.

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<sup>1</sup> The Petitioner states that ETL stands for extract, transform, load code.

By approving the labor certification in this case, the DOL certified that there are insufficient U.S. workers who are able, willing, qualified, and available for the offered position of ETL developer. See section 212(a)(5)(A)(i)(I) of the Act. The DOL also certified that the employment of a foreign national in the position will not adversely affect the wages and working conditions of domestic workers similarly employed. See section 212(a)(5)(A)(i)(II).

In these proceedings, we must determine whether the Beneficiary meets the requirements of the offered position certified by the DOL. We must also determine whether the Petitioner and the Beneficiary qualify for the requested immigrant classification. See, e.g., *Tongatapu Woodcraft Haw., Ltd. v Feldman*, 736 F.2d 1305, 1309 (9th Cir. 1984) (holding that the immigration service “makes its own determination of the alien’s entitlement to [the requested] preference status”).

#### B. The Beneficiary’s Possession of the Required Educational Credentials

Here, the Petitioner is requesting classification as a member of the professions holding an advanced degree. See section 203(b)(2) of the Act; see also 8 C.F.R. § 204.5(k)(1). Such a petition must be accompanied by a valid labor certification which “must demonstrate that the job requires a professional holding an advanced degree or its equivalent.” 8 C.F.R. § 204.5(k)(4)(i). The term “advanced degree” means “any United States academic or professional degree or a foreign equivalent degree above that of a baccalaureate. A United States baccalaureate degree or a foreign equivalent degree followed by at least five years of progressive experience in the specialty shall be considered the equivalent of a master’s degree.” 8 C.F.R. § 204.5(k)(2).

In addition, the beneficiary must possess an advanced degree, see 8 C.F.R. § 204.5(k)(3), and must meet all of the requirements of the offered position set forth on the labor certification by the petition’s priority date. 8 C.F.R. §§ 103.2(b)(1), (12); see also *Matter of Wing’s Tea House*, 16 I&N Dec. 158, 159 (Acting Reg’l Comm’r 1977); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg’l Comm’r 1971).

In this case, the petition’s priority date is August 28, 2015. This is the date that the DOL accepted the labor certification for processing. See 8 C.F.R. § 204.5(d) (explaining how to determine a petition’s priority date).

The labor certification states the minimum educational requirements of the offered position of ETL developer as a U.S. bachelor’s degree or a foreign equivalent degree in business administration, computer science, computer information systems, or management information systems. The labor certification also states that the offered position requires at least 60 months of experience as a programmer analyst or software developer. The labor certification states that “No” alternate combination of education and experience is acceptable.<sup>2</sup>

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<sup>2</sup> Part H.14 of the ETA Form 9089 states additional experience requirements of the offered position. Because those requirements are not at issue, we will not recite them in this decision.

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In evaluating a beneficiary's qualifications, we must examine the job offer portion of an accompanying labor certification to determine the minimum requirements of an offered position. We may neither ignore a term of the labor certification, nor impose additional requirements. See *K.R.K. Irvine, Inc. v. Landon*, 699 F.2d 1006, 1009 (9th Cir. 1983); *Madany v. Smith*, 696 F.2d 1008, 1012-13 (D.C. Cir. 1983); *Stewart Infra-Red Commissary of Mass., Inc. v. Coomey*, 661 F.2d 1, 3 (1st Cir. 1981).

The plain language of the labor certification clearly states the minimum educational requirements of the offered position as a U.S. bachelor's degree or a foreign equivalent degree. Section H.4 of the labor certification states that the offered position requires a U.S. "Bachelor's" degree, rather than an "Associate's" degree or some "Other" educational credential. And while part H.9 of the labor certification states the acceptability of a foreign equivalent degree, part H.8 states that "No" alternate combination of education and experience is acceptable. Part H.14 of the labor certification states additional experience requirements of the offered position, but does not identify the Petitioner's acceptance of any alternate level of education. Therefore, at a minimum, the labor certification requires a U.S. bachelor's degree or foreign degree equivalent.

The Beneficiary attested on the labor certification to her receipt of a bachelor's degree in business administration from the [REDACTED] in India in 2007. The record contains a copy of a bachelor of commerce diploma from the university, indicating the Beneficiary's attainment of the degree in October 2005. The diploma and accompanying marks certificates indicate the Beneficiary's completion of a 3-year, baccalaureate program. The record also contains copies of [REDACTED] certificates indicating the Beneficiary's completion of the first year of a master of commerce program in April 2007.

The Petitioner submitted an evaluation of the Beneficiary's foreign educational credentials. The evaluation states that the Beneficiary's bachelor of commerce degree equates to 3 years of university studies in the United States. Combining the Beneficiary's baccalaureate with her completion of 1 year towards a master of commerce degree, the evaluation concludes that the Beneficiary has the equivalent of a U.S. bachelor of science degree in business administration, with a concentration in management.

Therefore, the record establishes the Beneficiary's possession of a 3-year, bachelor of commerce degree. But U.S. bachelor's degrees generally require 4 years of university or college study. *Matter of Shah*, 17 I&N Dec. 244, 245 (Reg'l Comm'r 1977). Thus, as the evaluation submitted by the Petitioner indicates, the Beneficiary's bachelor of commerce degree is not the equivalent of a U.S. bachelor's degree. Rather, the Petitioner attempts to establish the Beneficiary's possession of an equivalent degree by combining her 3-year degree with her 1 year of graduate studies.

As noted above, the labor certification's primary requirements in H.4 do not indicate the Petitioner's acceptance of a U.S. bachelor's degree equivalency based on a combination of educational credentials. Rather, the labor certification states that the offered position requires the possession of at least a single, U.S. bachelor's degree or a foreign equivalent degree. No alternate combination of

education and experience was listed as acceptable. The record therefore does not establish the Beneficiary's possession of the minimum education required by the terms of the labor certification.

Also, the Act and its legislative history indicate that an advanced degree professional must possess at least a bachelor's degree without combining educational credentials, or combining education with experience. In response to complaints that the immigrant visa regulations bar the substitution of experience for education, the former Immigration and Naturalization Service (INS) reviewed the Immigration Act of 1990. The INS found that "both the Act and its legislative history make clear that, in order to qualify as a professional under the third classification or to have experience equating to an advanced degree under the second, an alien must have at least a bachelor's degree." 56 Fed. Reg. 60897, 60900 (Nov. 29, 1991); *see also SnapNames.com v. Chertoff*, No. CV 06-65-MO, 2006 WL 3491005, \*\*10-11 (D. Or. Nov. 30, 2006) (holding that USCIS properly concludes that classification as a professional or advanced degree professional requires a single degree equivalent to a baccalaureate). The Beneficiary's claimed possession of the "equivalent" of a U.S. bachelor's degree based on a combination of educational credentials is insufficient to establish that she possess a U.S. bachelor's degree or foreign degree equivalent or that she qualifies for the requested classification.

Therefore, based on the plain language of the labor certification, the record does not establish the Beneficiary's possession of the educational credentials required for the offered position. Also, based on the Act and its legislative history, the record does not establish the Beneficiary's possession of the educational credentials required for the requested classification of advanced degree professional.

On appeal, the Petitioner asserts "a very narrow exception" to the requirement that an advanced degree professional possess a single degree equivalent to a U.S. bachelor's degree, contending that because the Beneficiary completed her 3-year degree and 4th year of study at the same university in the same field, the Beneficiary meets the "single source" requirement.

The Petitioner, however, cites no legal authority for this asserted exception. Because the Act and its legislative history indicate that an advanced degree professional must possess at least a bachelor's degree without combining educational credentials, we decline to recognize an exception for those who complete studies in the same field at the same institution, where the study did not result in a single degree that can be deemed to be the foreign degree equivalent of a U.S. bachelor's degree.

The Petitioner also states that the Electronic Database for Global Education (EDGE) created by the American Association of Collegiate Registrars and Admissions Officers (AACRAO) is not authoritative in all situations. We note that federal courts have found EDGE to be a reliable, peer-reviewed resource for foreign educational equivalencies. *See, e.g., Viraj, LLC v. U.S. Att'y Gen.*, 578 Fed. Appx. 907, 910 (11th Cir. 2014) (finding that USCIS may discount letters and evaluations submitted by a petitioner if they differ from reports in EDGE, which is "a respected source of information"). However, neither we nor the Director relied on information from EDGE in determining the Beneficiary's eligibility. We base our analysis on the same conclusion found in the submitted educational evaluation, which states that the Beneficiary's 3-year bachelor of commerce degree is not equivalent to a U.S. bachelor's degree.

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For the foregoing reasons, the record does not establish the Beneficiary's possession of the educational credentials required for the offered position or the requested classification of advanced degree professional.

## II. CONCLUSION

In visa petition proceedings, a petitioner bears the burden of establishing eligibility for a requested benefit. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, the Petitioner did not meet that burden.

**ORDER:** The appeal is dismissed.

Cite as *Matter of S-A-, Inc.*, ID# 85886 (AAO Dec. 5, 2016)